APPENDIX A

Excerpts from Parts IV and V of the Handbook of Public Assistance Administration, United States Department of Health, Education, and Welfare.

Part IV. *Eligibility and Payments to Individuals*

3410-

3499. *Factors Applicable to Aid to Dependent Children* *11/4/46*

3410. *Deprivation of Parental Support or Care*

3411. *Provision of the Act*

Title IV, section 406 (a) reads:

> "The term 'dependent child' means a needy child . . . who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent . . ."

3412. *Interpretation*

This provision sets forth the two eligibility factors, "need" and "deprivation of parental support or care," on which Federal participation is conditioned. The provision requires that both need and deprivation of parental support or care exist in the individual case but does not require that an affirmative showing be made that a causal relationship exists in the individual case.

Under the act, the term "deprived of parental support or care" is interpreted to encompass the situation of any child who is in need and otherwise eligible, and whose parent either has died, has a physical

or mental incapacity, or is prevented by continued absence from providing maintenance, physical care, and guidance for his children. In this interpretation "parent" may mean either the father or the mother. Since the interpretation relates to parental support or care, it is equally applicable whether the parent was the chief breadwinner or devoted himself or herself primarily to the care of the child.

Situations within the scope of the term "deprivation" are as follows:

1. *Children Living With Both Natural Parents*

   Children may be included when living with their natural mother and father, if they are deprived of parental support or care by reason of the incapacity of either parent.

2. *Children Living With Either Father or Mother*

   Children may be included when deprived of support or care by reason of the death, incapacity, or continued absence of either the mother or father.

3. *Legally Adopted Children*

   Legally adopted children are included on the basis of deprivation of parental support or care due to the death, continued absence, or incapacity of one or both of the parents who adopted the child, rather than on the basis of deprivation of the natural parent's support or care. This interpretation recognizes the current development of social legislation designed to effect complete substitution for the natural parents, in the

relationship sustained by a child and the parents who adopt him.

4. *Children Living in Home of Stepparents*

A child living in the home of a stepparent who is not required by State law to assume a parental role, may be included on the ground that he lacks the support or care of the natural parent who is dead or absent. In the absence of legal obligation to assume a parental role, a stepparent is no more of a "parent" than any other person acting in loco parentis. In these situations, the only safeguard to the child's right to assistance is his eligibility under the condition of being deprived of the support or care of the natural parent. In States in which the stepparent is required to assume a parental role, a child may be deprived of support or care if the stepparent is dead, absent, or incapacitated.

5. *Children of Unmarried Parents*

Children of unmarried parents may be included within the scope of title IV on the same basis as children of married parents. The act provides for the use of aid to dependent children as a maintenance resource available on equal terms to all children who meet eligibility conditions.

6. *Unborn Children*

When the mother's pregnancy has been determined by medical diagnosis, Federal participation in payments on behalf of an unborn child may be claimed on the basis of the same eligibility conditions as apply to other children.

Appendix A

Part V.. *Fiscal Operations and Accountability*

3000-

3999. *Accountability for Federal Funds Advanced*

8/5/63

3300. *Fiscal Accounting by State Agencies*

3320. *Recipient Count*

The quarterly statement of expenditures and recoveries which is required for OAA, AB, AFDC, APTD, and AABD under title XVI must include, as a part of the basis for computing the amount of Federal participation in such expenditures, the number of eligible recipients each month. The procedures for determining the recipient count is set forth below.

• • •

In AFDC, the recipient count for a family may include all eligible children, plus the eligible relative with whom such children are living. Effective October 1, 1962, when at least one of the children in a family is eligible due to the unemployment or incapacity of his own parent in the home, the recipient count may include all eligible children and two eligible relatives with whom the children are living, if their needs were included and they are married to each other. In the context of deprivation by reason of incapacity or unemployment, the term "parent" means the natural or adoptive parent. A step-parent can be counted as the second eligible adult recipient only when he is the legal spouse of the child's own parent. The conditions governing deprivation due to unemployment or incapacity of a parent are set forth in IV-3423 and IV-3424.

APPENDIX B

Alabama's Substitute Father ADC Eligibility Rules.

1. The Rule Prior to the Decision Below

Pt. I, Ch. II, Subd. V(A) of the Alabama Manual of Public Assistance Administration:

V. *Child Ineligible if There Is a Father or Mother Substitute*

A. *Father Substitute:* An able-bodied man, married or single, is considered a substitute father of *all* the children of the applicant-recipient mother living in her home, whether they are his or not, if: (1) he lives in the home with the child's natural or adoptive mother for the purpose of cohabitation; or (2) though not living in the home regularly, he visits frequently for the purpose of cohabiting with the child's natural or adoptive mother; or (3) he does not frequent the home but cohabits with the child's natural or adoptive mother elsewhere. Pregnancy or a baby six months or under is prima facie evidence of a substitute father as indicated above.

When there appears to be a substitute father, disapprove an application or terminate aid unless the mother establishes that one of the following situations exists: (1) she and/or the substitute father meets the criteria of disability as described under "Physical or Mental Incapacity"; (2) the substitute father is no longer living in the home or visiting the home for the purpose of cohabiting with her; or (3) the relationship is broken between the mother and a man who has not been living in the home or frequenting the home.

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Evidence showing that the relationship has been discontinued includes proof such as: the father has married another woman; or he is in a public institution; or, if he has been living in the home, he is now living at another address; or a notarized statement by the mother and substitute father that they have discontinued their relationship. This evidence must be corroborated by at least two acceptable references in a position to know. Examples of acceptable references are: law-enforcement officials; ministers; neighbors; grocers. If needed, the mother will be given 30 days to present her evidence before her application is disapproved or her case closed unless additional time is needed. If additional time is needed, another 30 days may be allowed. In no instance shall more than 60 days be allowed. Although the burden of proof rests with the mother, the worker will assist in any way possible to help the mother establish that she has broken a relationship. Also, before rejecting an application or closing a case, the worker will talk with the mother about reasons for the agency's action and about her right to reapply at any time that she does break the relationship. If the family is otherwise eligible, the case should be recertified for aid immediately.

Appendix B

2. The Rule Prior to this Court's Dissolution of its Stay of the Order Below

Administrative
Letter No. 2373
November 13, 1967

STATE OF ALABAMA
DEPARTMENT OF PENSIONS AND SECURITY
Montgomery

To: COUNTY DIRECTORS OF PENSIONS AND SECURITY

SUBJECT: Discontinuation of the Substitute Parent Policy —Effective Immediately

In line with the decree issued by the United States District Court for the Middle District of Alabama, Northern Division, the substitute parent policy is no longer in effect. This change deletes Item V which appears on pages II-24, 25, 25a, and 26 of Part I, *Manual for Administration of Public Assistance.* It also deletes all references to this policy that appear elsewhere in the manual.

In the event there is no appeal, we will send you the manual revision incorporating this change at an early date. In the meanwhile, in addition to the changes referred to above, provisions in the first paragraph of Item IV on page II-24 are being amended as follows:

> If children *live in the home with two able-bodied parents,* ADC cannot be given even though there may be no source of income. "Parent" in this instance refers to:
>
> 1. A legal parent.
> 2. A stepfather or stepmother.
> 3. A man living in the home who assumes the role of father whether or not married to the mother. In

such case consider him the father of all the children in the home.

3. The Rule Presently in Force in Alabama Under the District Court's Order

Administrative
Letter No. 2402
February 9, 1968

STATE OF ALABAMA
DEPARTMENT OF PENSIONS AND SECURITY
Montgomery

To: COUNTY DIRECTORS OF PENSIONS AND SECURITY

SUBJECT: Administrative Letter No. 2398, "Substitute Parent Policy," January 31, 1968

This will confirm and refine the definition of parent as given in the administrative letter referred to above and in our telephone calls to you on January 31, 1968. If children *live in the home with two able-bodied parents,* ADC cannot be given even though there may be no source of income. "Parent" in Item "IV" on page II-24 of *Manual for Administration of Public Assistance,* Part I, is now defined as:

1. A legal parent. This includes a father who has legitimated his child and a father of a child whose paternity has been judicially determined.
2. A stepparent. A woman or man who has established a common-law marriage with a child's parent comes within the definition of stepparent. Both parents must be free to contract matrimony and must represent themselves in the community as man and wife in order to establish a common-law marriage.

• • •

APPENDIX C

Other Substitute Father ADC Eligibility Rules.[1]

I. *The Character of the Rules*[2]

A. *Rules which require both presence in the family home and an undefined "father-role" which need not include support of the children.*

1. Arizona ("head of household")
2. Idaho
3. Indiana ("partially assume" father-role)
4. Kentucky
5. Oklahoma

B. *Rules which require presence but not "father-role."*

1. New Hampshire
2. New Mexico
3. South Carolina
4. Texas
5. Utah (but eligible if "stable non-marital union")
6. Virginia

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[1] No definitive compilation of substitute father ADC eligibility rules was available to *amici*. Welfare regulations and manuals, as a general rule, are not published. In many cases, access to the regulations and manuals is most difficult to achieve. This Appendix is based on the state welfare manuals in the Library of the Columbia University School of Social Work and correspondence from state welfare officials to the Center on Social Welfare Policy and Law. These sources provided no information on Missouri and Tennessee. We believe this compilation is otherwise complete.

[2] This breakdown categorizes the rules as to two general factors—whether or not the "substitute father" need be present in the family home, and whether or not he occupies an undefined "father-role" towards the children, which need not include providing them with support. The compilation that follows is alphabetical by state.

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C. *Rules which require "father-role" but not presence.*

1. D. C.
2. Mississippi

D. *Rules which require neither "father-role" nor presence.*

1. Alabama
2. Arkansas
3. Georgia
4. Louisiana
5. Michigan
6. North Carolina (if one illegitimate child)

II. *The Texts of the Rules.*

1. *Arizona.* Family Services Manual, § 3-403.6(D).

D. *The Adult Male in the Home:* State Law defines a Dependent Child as "Dependent child means a needy child under the age of eighteen years who has been deprived of parental support or care by the reason of death, unemployment of the supporting parent as defined and prescribed by federal statutes relating to welfare, continued absence from the home, or physical or mental incapacity of a parent, and whose . . ."

If an adult male is living in a household and acting as head of the household, the children in the family are not deprived of parental support because of the death or continued absence from the home of the father. Depending on the circumstances, the children might be deprived of parental support of the father because of physical or mental incapacity

of the father or because of unemployment of the father.

Whenever an adult male is found to be living in an ADC household and acting as head of the household, the eligibility of which depends upon the father being absent from the household, the ADC grant will be immediately suspended. The grant will not be reinstated until "deprivation of parental support" as an eligibility factor is again established and verified.

When the caseworker establishes the presence of an adult male in the home of an ADC applicant or recipient and as the result rejects the application or discontinues an active case, and the person whose application was rejected or grant discontinued makes a new application or requests reinstatement, on the basis the unrelated adult male is no longer in the home, the new investigation of deprivation of parental support must determine without doubt the man in question has removed himself completely from the household. It is suggested that such cases be referred to the Special Services Unit for investigation.

2. *Arkansas.* Dept of Public Welfare Manual, §2813 (July 1966).

When a step-parent resides in the home, or when a parent maintains a stable non-legal union, "continued absence of a parent from the home" can no longer be considered as reason for deprivation. *A stable non-legal union is presumed, even though a father is not living continuously in the home, where the mother*

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affords the privileges of a husband to a man and there is a continuing relationship. Evidence of such a relationship may be:

1. Frequent visits by the man to the home of the mother.
2. Frequent appearances of the man and mother together in public.
3. Repeated pregnancy by the same man.
4. Joint charge or bank accounts or privilege of mother to charge to man's account, joint purchases.
5. Substantial gifts to the family by the man.
6. Address of the family given as man's residence to employer, on driver's license, or with license authorities.
7. Purchases on installment made by man if he has delivery made to the mother's address or any arrangement made with the man's creditor to have his bills for any unpaid balance on his purchases sent to him at mother's address.
8. Delivery of man's mail to mother's address.
9. Declaration of children and/or mother as the dependents of the man on W-4.

One of the above facts may not be sufficient evidence of the existence of a stable non-legal union. All possible evidence will be obtained by the county department and the decision that a union exists or does not exist will be made. (Emphasis in original.)

3. *District of Columbia.* Handbook of Public Assistance Policies and Procedures, EL. 4.5 (IV) (C-E) (July 1965)

Appendix C

C. *Relationship with a "Substitute Parent".*

1. Assistance must be denied when the mother and children share the family's living quarters with a man who maintains the role normally occupied by a husband and parent, unless the man is incapacitated.

   Any man who is not a close blood relative of the mother, i.e., father, grandfather, brother or son, who shares the family's living quarters, is presumed to be in this relationship, unless clear evidence is presented to the contrary.

2. Assistance must be denied when the mother continues her relationship with her husband or has a continuing association with a man (unless he is incapacitated) whose relationship to the family is that of husband and father even though he maintains an address elsewhere.

This policy also applies when a man maintains such a relationship with the family even though he maintains an address elsewhere.

Social Worker's Responsibilities. In carrying out this policy the Social Worker will:

1. Investigate or refer to Investigation Service any evidence of a relationship with a man;
2. Evaluate the nature of his relationship to the family, when such a person is found;
3. Immediately terminate the payment when the man is living in the home or otherwise continuing a family relationship.

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D. Some facts to be considered in determining that the man (not living in the home) has a relationship with the children similar to that of father and child are:

1. Visits the home to see the children;
2. Contributes to the support of the children;
3. Exercises parental control and guidance;
4. Donates gifts to the children;
5. Cares for the children when the mother is ill or absent;
6. Is the father figure in the home;
7. Acts "at home" with the children by dressing, feeding, carrying, or fondling them;
8. Take the children on walks, excursions and the like;
9. Shows concern about the health of the children and uses health facilities in the community to restore the health of the children;
10. Provides clothing and other necessities for the children;
11. Shows interest in the educational progress of the children, such as by attending PTA meetings, visiting school about the children, helping the child with school work;
12. Responds in time of crisis, such as illness of children, child in difficulty with the police.

E. Children whose mother has a *conjugal relationship* with a man outside the home may be included in the

AFDC Program when there is a clear dissociation from the normal family relationship as defined above, and provided they are otherwise eligible.

All resources and possibility of support from the man concerned must be determined.

4. *Georgia.* Manual of Public Assistance Administration, Part III, §V, p. 7 (June, 1964).

(5) *Substitute Father:* A man living in common-law relationship with a woman is considered a substitute father of any child had by that woman, or any child that woman has had by another man. Further, a man living in common-law relationship with a woman is responsible for the support and care of his and her children, regardless of whether or not he is married to another woman. Regulations place the same responsibility on this man as if he were the legal husband. The rules for establishing deprivation are the same as those used in establishing it in a legal-father situation.

A common-law relationship is considered to exist when a man, married or single, lives in the home with the A/R for the purpose of cohabitation or, if not living in the home regularly, he visits frequently for the purpose of living with or cohabiting with the applicant.

Pregnancy or a newborn baby is prima facie evidence of a substitute father. Only in situations where strong, convincing evidence is submitted, proving that the substitute father is no longer in the home and has discontinued his relationship will the factor of deprivation be established. Such evidence would include proof that the man has moved to a distant place, or has been admitted to a

public institution. The burden of proof rests on the mother. Testimony of the applicant must be corroborated by law-enforcement officials, friends, neighbors, ministers, grocerymen and similar sources. All evidence in cases involving substitute fathers is submitted to the County Board for determination of whether or not there is a substitute father and whether or not a common-law relationship exists.

5. *Idaho.* Letter from Harold H. Smith, Director of Social Service, Idaho Department of Public Assistance (Dec. 7, 1966), in response to inquiry from Amicus Center.

"In regard to the Aid to Dependent Children program, the Department defines a parent as follows: 'A parent, as used in connection with ADC, is considered to mean either a step, natural, or adopted father or mother of the child. A child living with a natural parent and a step parent, or with a natural parent and some other person acting as a parent, is considered to be living with parents.'"

6. *Indiana.* Public Assistance Manual, III-C-15.

13. *Substitute Father in the Home*

There may be instances where a mother, who applies for or receives ADC for her children, has established a relationship with a man (who may or may not be the natural father of the children) and there is reason to believe that this man is living in the home with the mother and the children, partially assuming the role of husband and father. If it is established that

such a man lives continuously in the home, the family is not eligible for ADC.

When such a condition is suspected or established, the worker shall explain to the mother and, if possible, to the man involved, this factor of eligibility, and provide them with whatever social services are appropriate for remedying the situation. There may be legal bars to a desired marriage between the man and woman which could be removed. If the man is not the father of any of the children and cannot or will not assume responsibility for their support, the mother may be able to use casework help to terminate her relationship with the man. If the man is the alleged father of any of the children, and marriage is not feasible, steps should be taken to establish paternity. See Chapter VIII, Section A for further guides for social services.

When the presence of a man in the home is suspected but not established by admission of the mother and/or the man involved, the worker is expected to take whatever investigative steps are indicated to establish the facts, and to record the supporting evidence. This requires being particularly alert in observing conditions in and around the premises, getting the names and addresses of all adults found in the home on the occasion of the worker's visit, and learning their relationship to the family. It may mean checking employment records, credit accounts with business firms, landlord's records, interviewing reputable persons in the community. It may

also require checking by means of the license number if an automobile is parked regularly in front of the ADC home. The caseworker shall also observe the names on apartment mail boxes and identifying door bells.

7. *Kentucky,* Public Assistance Manual of Operation, §2214(G) (Nov. 1965).

G. *Child living with either parent and person unrelated by marriage in an established family relationship.* The child is considered as deprived of parental support only if incapacity exists.

An established family relationship is defined as a stable non-legal union in which the parent lives with a person of the opposite sex who occupies the role of spouse of the parent and *occupies a paternal* role with respect to the children in the family. In determining the existence of such a relationship, the following guides are used:

1. Presence of the person in the home.
2. Frequent appearances of the man and woman in public as a couple and of the couple accompanied by the children.
3. Repeated pregnancy on the part of the woman by the same man.
4. Joint charge or bank accounts or joint purchases of household items or items for the benefit of the children.
5. School registration of a child listing name of person as parent.

6. Observation of care or control of child exercised by the person.

7. Rental agreement made by the individuals as a couple.

8. Address of family given as person's home address on drivers license, to employer or other third persons.

9. Declaration of children and/or parent as dependents for income tax purposes.

10. Hospital admissions of parent or child under the name of person.

Presence of one of the above factors does not necessarily prove an established family relationship, but if after careful analysis of the total home situation, circumstances indicate that an established family relationship exists, the child(ren) shall not be considered deprived of parental support and the case will. be suspended, discontinuing the money payment.

Eligibility for the money payment cannot be reestablished until the individual occupying the parental role has been absent from the home for 30 days or more. However, services will continue during the suspension period for the purpose of making a plan for the child(ren). If at the end of 60 days the established family relationship continues to exist, the case will be discontinued.

8. *Louisiana.* Manual of Policies and Procedures, §§2-740 (Dec. 1960) and 2-742.1 (May 1964).

Appendix C

2-740 DEPRIVATION DEFINED

A. *Persons in relation to whom deprivation shall be established*

	When child lives with:	The condition of deprivation shall be established in relation to:
Rev.	(1) Both parents living in marital union (legal or nonlegal).	(1) One parent in the home or spouse with whom the parent in the home is maintaining a nonlegal union. (Parent means legal parent in home, legal stepparent in home, or nonlegal spouse in the home or with whom the parent in the home is maintaining a nonlegal union.) (See 2-742.1).
	(2) One parent not living in marital union:	(2) Absent parent:
	(a) Except for minor unmarried mother	(a) Absent parent—This is applied to the latest absent spouse (legal or nonlegal) of parent in the home.
	(b) Minor unmarried mother	(b) Absent parent of child and parents of minor unmar-

ried mother as provided in Section 2-749.

(3) Neither parent. (3) Absent legal parents (as defined in Section 2-741.)

C. *Child living with both parents*

A child who lives with two parents, or a parent and a stepparent, *or a parent and his nonlegal spouse,* does not meet the condition of deprivation unless one of these persons is incapacitated as provided in Section 2-751A. (Emphasis in Original.)

2.742.1 A. *Definition of nonlegal marital union*

A nonlegal marital union exists between a parent of an ADC child and a person of the opposite sex when they are not married to each other and there is sufficient evidence to conclude that:

(1) They live together as husband and wife in a common household,

OR

(2) Their relationship is of a marital nature although they do not live together in a common household.

B. *Nonlegal marital union as related to deprivation of parental support*

In Section 2-740, Deprivation Defined, the definition of parent in relation to whom deprivation

must be established includes the spouse with whom the child's parent in the home is maintaining or has maintained a nonlegal marital union.

Therefore, when the parent applying for or receiving ADC is maintaining or has maintained a nonlegal marital union as defined above, deprivation of parental support must be established in accordance with 2-740 B. in relation to this parent and this parent's latest nonlegal spouse.

If the parent has maintained a nonlegal marital union in the past, a child in the home shall be considered deprived of parental support only if there is evidence from which it is concluded that the nonlegal spouse of the past is dead or continually absent from the home and there is no nonlegal spouse at present.

If the parent is currently maintaining a nonlegal marital union, a child in the home shall be considered deprived of parental support only if incapacity of one or both adults (parent and parent's nonlegal spouse) is established. (Nonlegal marital union as applicable to suitable home, see 2-734.)

C. *Evidence of a nonlegal marital union*

Examples of evidence listed below are not exclusive. In a given case situation, evidence other than the examples listed may be sufficient to conclude that the ADC parent is or is not maintaining a nonlegal marital union.

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(1) *Maintaining a common household.* A common household is being maintained by two or more persons when they share shelter space, food or furnishings. A man's employment, such as construction work, merchant marine, etc. may cause him to be away from the household for long periods yet he is considered a member of the household if this is the place that he considers home and to which he returns periodically.

When the parent and another adult of the opposite sex who are not married to each other acknowledge that they are maintaining a common household, this is sufficient evidence that a nonlegal marital union exists.

When they are referred to in the community at large as living together as husband and wife, a nonlegal marital union shall be presumed to exist.

Any of the following or similar evidence is sufficient to conclude that the couple are maintaining a common household.

The man's employer, fellow employees or friends pick him up at the woman's address.

The man gives the woman's address as his to his employer or on any document, such as car license, charge account, etc.

The family's telephone is listed in the man's name or is listed under the woman's first name and his last name.

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(2) *Repeated pregnancies by the same man to whom the mother is not married*

This is conclusive evidence a nonlegal marital union did exist. At the time of *application,* deprivation of parental support shall be considered as established only when there is definite evidence that the marital relationship has not existed for a period of at least six months, or there is positive evidence of a genuine separation (though for less than six months) *and* severe hardship exists. (See 2-742; applies to *applicants only.*)

If the nonlegal spouse continues to visit the home, it shall be presumed that the nonlegal marital union currently exists, unless there is acceptable evidence that his visits are to see the children he has acknowledged as his. In such a case, visits to the home should be made at hours indicating interest only in the children rather than continued interest in the mother.

(3) *When a legally married man living with his legal family is visiting*

If a man who is legally married and living with his legal family is visiting an ADC mother in her home or meeting her elsewhere, a nonlegal union must be presumed to exist.

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(4) *Other facts which are sufficient basis for questioning whether a nonlegal marital union exists*

Any one or more of the facts listed below is sufficient basis for questioning that a nonlegal marital union exists between the mother and a man to whom she is not married, and who is not her blood relative, UNLESS there is positive evidence that a nonlegal marital union does not exist.

The facts listed below as sufficient basis for questioning whether a nonlegal marital union exists are not necessarily of equal weight. When one or more of these facts exist, there may or may not be a logical, reasonable, acceptable explanation which along with other evidence may be sufficient to conclude that a nonlegal marital union does not exist. On the other hand, one fact alone or a combination of facts, when there is no such explanation, may be sufficient to conclude that a nonlegal marital union does exist. In any case, the decision shall be made on the basis of evaluation of all evidence: the fact or facts which cause question, the explanation of these facts and all other information relating to existence or nonexistence of a nonlegal marital union.

Regular contributions (cash or other) to the family by a man who does not make such contributions through court order.

Joint charge or bank account in the name of the children's mother and a man.

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Mother has privilege to charge to a man's account.

Purchase by man for delivery to the mother's address.

Arrangement by man for bills for unpaid balance on his installment purchase to be sent to the mother's address.

Any mail addressed to the man at the mother's address.

Joint purchases by the mother and a man.

Substantial gifts by a man to the family.

Payments by a man of rent and/or utilities for the family's home.

Payments or signing of lease by a man on home in which the family lives.

Frequent presence of a man in the home, especially at meal-times, unconventional hours or overnight.

Presence of a man's clothes or other personal possessions in the home.

Police records linking the mother and a man together.

A man has a key to the home.

A man has free access to the home.

Address of the family given by a man as his address to a third person, such as employer, license bureau (driver's or other), loan company, charge accounts, LSES, etc.

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Listing by a man of the mother and/or children as dependents for income tax purposes or on his insurance policy.

Frequent meetings of the mother and a man outside the home.

Statement of references that the mother and a man live as husband and wife when evaluation of the references' association with the family and their reasons for giving information establishes that it is acceptable.

D. *Making decision as to existence of a nonlegal marital union*

The decision as to whether a nonlegal marital union does or does not exist shall be based on evaluation of total information secured. When there is contradictory information, no one piece of evidence is sufficient for a decision, unless it is irrefutable. When there is contradiction between the client's statement and statements of others, the worker shall evaluate this against his observations and documentary evidence available.

9. *Michigan.* Manual of Policies and Procedures, Part B, Item 259(2) (April 1963).

In the case of an ADC parent living in stable union with a person to whom he or she is not married, or in which the parent has developed a continuing relationship not involving a common living plan, but the partner is exercising the role of parent to the children

or the rights of a spouse to the client, the following principles apply. The bureau's service plan is to be aimed at helping the client legalize the relationship or terminate it. The client is to be permitted 30 days in which to marry. If there is an impediment to marriage, this means 30 days in which to retain an attorney and file a bill of complaint for divorce preliminary to remarriage. The client must continue to cooperate by taking each legal step as it becomes possible, and no more than 6 months may be permitted to get the case on the court docket.

If legal action has *begun,* but is not completed, the client may continue to maintain a common living plan or social contacts with her partner when termination of the common living plan is not required by the court as a condition of legal action. In the case of illegal cohabitation of an applicant, the grant may not be opened unless the client has actually married the partner where there is no impediment to such marriage, or has begun steps toward legalization as discussed in the second paragraph on this page where an impediment exists, or the bureau is satisfied that the relationship has been terminated.

If legal action is not begun in 30 days, the client must terminate all social and financial contacts with the partner as a condition of eligibility. This does not prohibit payment of voluntary support for the children by their natural father, provided such payments are made by mail, and the bureau is kept fully informed.

Such situations discussed in the preceding paragraphs may raise questions of financial need, rather

than a question of suitability, and the bureau must be careful to distinguish between them. Refer to Item 319 for discussion of factors related to determination of need.

10. *Mississippi.* Manual of Policies and Procedures for Administration of Public Assistance, §D, p. 4512 (Sept. 1966).

In determining deprivation of parental support or care, the term "parents" means more than the child's own parents (natural parents). A child will not be considered deprived if he lives in the home with the persons listed below if they are able-bodied. These persons are:

1. His own (natural) parents.
2. His own parent and a stepfather or stepmother.
3. His own parent and a man or woman who lives in the home and maintains a marital relationship with the child's parent, even though he or she is is not married to the child's own parent, or is not the parent of any of the children in the home.
4. His own parent who maintains a continuing relationship with a man who does not live regularly in the home but who is regarded by the mother as her husband and by the children as their father. The man may be the father of one or more of the children, or of none of them, but assumes the father-role for them.

That is, the children look to the father-person for direction and discipline, for some financial support, and for the assumption of other duties which a father ordinarily performs in the home.

Appendix C

11. *New Hampshire.* Manual of Policies pp. 47-48 (July 1966).

Deprivation of Parental Support or Care (RSA 167:6e). The law states that a child must be needy and deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent. Parent means either the father or the mother, regardless of whether the parent was the chief breadwinner or devoted one's self primarily to the care of the child. To insure the best possible home setting for the child, no unrelated male is permitted to live with an ADC family, nor shall an ADC family live in the home of an unrelated male as interpreted.

Unrelated Male Living with ADC Family. Under certain circumstances, later described, an unrelated male is not permitted to live with an ADC family, whether in their home or his. An unrelated male, within the meaning of this provision, is a man 18 years of age or older who is not related by blood to the ADC parent or other female payee-relative. "Living with" or "in the home of" means that an unrelated male actually lives as a member of the family in the same household with the ADC family, and the personal relationship is one or is likely to become one in which he assumes the role of a husband to the ADC mother or other female payee-relative without benefit of marriage.

Evidence that the unrelated male lives as a member of the family will be found in the apparent consistency and logic of physical evidence, such as whether he sleeps and eats there, has his belongings

there, uses the home as his address, etc., plus the evidence of personal relationship between him and the mother and children. A husband, from whom a wife is divorced or legally separated, is an unrelated male within the meaning of this provision if he actually resumes living in the ADC household on the basis described above without remarriage.

The intent of this policy is to try to prevent extra-marital living arrangements within ADC households which might result in a situation injurious to a child's physical, mental or moral well-being by leading to neglect on the part of the ADC parent; to impregnation of a parent or a child; to community criticism and censure; or to misuse of any ADC funds intended for support and care of children.

The policy is not intended to be used by the division to prevent a divorced or separated husband from exercising his legal rights to see his children. Limitations on such rights are a matter for settlement between parents, with the advice and help of the Caseworker, if they wish or for determination and decision by the court. Neither is it intended to prevent or prohibit normal social or employment relationships on the part of an ADC mother or other payee relative under socially acceptable conditions.

The husband in a married couple, with whom an ADC family shares a home in return for work, or on some other acceptable basis, is not an unrelated male within the intent of this policy.

There are situations in which an unrelated male might be in the same household with an ADC family without intent to violate this policy, and which might

not be harmful to children or unacceptable to the community. For example, a mature ADC parent earns part of the family's requirements as a housekeeper for an elderly, ill, unrelated male without a wife; or provides care in the ADC household for an elderly male boarder or patient; or a payee-relative, such as a grandmother earns her living by taking in boarders, some of whom may be male.

All such situations are carefully evaluated by the caseworker in terms of the intent of the policy, and his recommendation reviewed by the district supervisor for approval of eligibility with respect to this policy.

The ADC mother, or other payee-relative, when it is then decided that a violation of policy exists, has to make her choice between ADC and a continuation of a relationship which makes her ineligible for ADC. Assistance may be continued for the payroll period in which she is informed of the decision of ineligibility, but is discontinued thereafter, unless she chooses to comply with policy.

12. *New Mexico.* Dept. of Public Welfare Manual, §221.722 (Dec. 1964).

"'Parent' includes the father, putative father, mother and any man living with the mother and child with the *exclusion of the step-father* of the child. There must be affirmative proof that no parent, other than the applicant, is in the home." (Emphasis in Original.)

13. *North Carolina.* Public Assistance Manual of Policies and Procedures, §440 p. 4 (Jan. 1959).

In any case where it is found that the mother with a child or children born out of wedlock is maintaining a relationship—(which amounts to a "common law relationship")—with a man to whom she is not married, the county board of public welfare may find that the family is not eligible for aid to dependent children as long as this sort of a relationship continues, and if a payment is being made it may be terminated. If an application is rejected or a payment is terminated for this reason, the record should show the basis on which the county determined that the continuous relationship existed. There are many factors which may be taken into consideration before making a decision, such as, the woman and the man being seen together frequently, evidence of pregnancy, evidence that the man provides food or makes regular contributions toward support of the mother and children, or that he shows an interest in the mother and children that would be expected of a husband and father.

14. *Oklahoma.* Manual of Policy and Procedures, §336 (January 1964).*

* According to L. E. Rader, Oklahoma Director of Public Welfare, in a letter to Amicus Center dated Nov. 29, 1966, "The general policies as outlined in various sections of the State manual provide . . . that when deprivation is based on absence of a parent, the child is ineligible if there is also in the home a step-parent or person who has assumed the role of the parent's spouse and will, therefore, be considered to have assumed the role of a step-parent (without regard to legal status). An assumption of support or care by a step-parent or substitute parent is made when the person is actually making his home with the child or children and is accepting responsibility for the children the same as though he were a natural parent. In other words, the State's policy provides that a mother is ineligible for AFDC on the basis of deprivation at any point it is established conclusively that there is a step-parent or substitute parent in the home."

Children living with an own parent are eligible if there is also in the home a step-parent or person who has assumed the role of the parent's spouse and who will, therefore, be considered to have assumed the role of a step-parent (without regard to legal status). An assumption of support or care by a step-parent or substitute parent will be made when the person is actually making his home with the child or children, and is accepting responsibility for the children, the same as would a natural parent. Such support does not, however, relieve an own parent of his legal responsibility for his children and the worker will give all help possible in developing support for him.

15. *South Carolina.* Manual of Policies and Procedures in Public Assistance, Vol. IV, p. 44.

Common-Law Relationship

A man living in common-law relationship with a woman is responsible for the support and care of his and her children, regardless of whether or not he is married to another woman.

The general law of the State recognizes common-law marriages. Under this law the parties must be free to contract legal marriage, and there are certain other stipulations in the law. However, by regulation the State Department has adopted the policy of considering a man and woman who are living together as having established a common-law relationship and the man has the same responsibility for her and her children as though he were the legal husband. Where such common-law relationships are established, it will be necessary to clear all eligibility

factors applicable to legal parents before the children can be considered deprived of parental support.

Since agency definition of a common-law relationship is that a man and woman be living together, it will be necessary to have definite evidence that an applicant for AFDC actually has a man or woman living in the home with him or her before a common-law relationship can be established. As a matter of actual practice this situation usually relates to a mother with children applying for assistance in the care of her children. The question of common-law relationship therefore usually relates to whether or not she has a man living in the home with her who, under agency policy, would be held responsible for the support of the family. In instances where it is determined that the mother actually is living in common-law relationship with a man, it will be necessary to clear eligibility from the standpoint of the man's ability to work for the support of the family.

16. *Texas.* Dept. of Public Welfare Manual of Services, §§2640 (Oct. 1959) and 2642.60 (April 1963).

2640. . . .

The child must be deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent. By "parents" is meant the mother and father of the child, or the mother or father of the child and the individual with whom the mother or father is maintaining a marital relationship or maintainng a home together.

Appendix C

2642.60 *Stability of Relationship*

Continuing pregnancies in the face of alleged lack of a father in the home is a strong indication that the designated relative has formed some stable relationship with a man who presumably functions as a father or a father substitute in the home to the children and an ADC grant may not be initiated or continued until it is established that no such arrangement is currently in effect.

In instances of a mother applying for an illegitimate child, an ADC grant cannot be placed until the mother has made an effort to bring the father into the office to discuss plans for the child.

When the mother of an ADC child is cohabiting with a man, the grant will be denied on the basis that the child is not deprived of parental support. A grant may not be initiated or reinstated until it is established that the relationship has been terminated. Normally, a six months' period of time accompanied with evaluation of all other pertinent facts should make possible a decision as to whether the relationship is broken.

17. *Utah.* Manual of Public Assistance Policies, §§4431.72 and 4431.8 (Sept. 1965).

4431.72 *Unmarried Adults Living Together in a Husband-Wife Relationship.* One basic eligibility factor in the AFDC program is the absence of parent or acting parent. In some cases an AFDC mother will cohabit in a husband-wife relationship, whether with a divorced former husband or someone else, without the

benefit of marriage and without informing the county office. Such a living arrangement shall be considered to be a violation of the absence factor of eligibility of a parent or acting parent, and may be justification for discontinuing public assistance, particularly when the information continues to be withheld from the caseworker. In some cases living arrangements of this nature may be difficult to establish. There are, however, some guidelines which can be used to justify a conclusion that a couple are living together, such as:

1. The man lists the woman and children as exemptions in his Federal and/or State income tax statements;
2. The man lists the wife and/or children as dependents at his place of employment;
3. The man and woman use the same address for the delivery of mail;
4. Both use the same telephone number;
5. Credit accounts are opened and used by both or either as husband and wife;
6. Statements of a landlord that both use the same apartment;
7. Statements of close neighbors that the couple live as man and wife.

If one or more of these listed situations are found to exist, this is a signal that a more intensive investigation must be made. If a

suspected husband-wife relationship is found to be reasonably supported by more than one type of evidence, the case shall be closed until the situation changes. In addition to closing the case, there may also have been an overpayment of assistance. If an overpayment has been made, it must be handled in accordance with section 4860.

4431.8 *Stable Unions of Unmarried Adults.* Some unions of unmarried adults are very stable, the couples have been together for long periods of time, children have been born, and the unit has functioned successfully as a family. Common law marriages of this nature are not recognized under Utah law, and as a result the children have no legal protection, even though other aspects of their family and social relationships seem to be reasonably normal. Such common law marriages are more frequent among certain minority groups, particularly since their customs and social patterns are different and the common law union is more or less normal and acceptable among these people. It is not intended that the regulations in subparagraph 4431.72 be used to disrupt stable unions of unmarried adults, and if necessary such families may be considered eligible for public assistance in the same manner as other eligible recipients.

On the other hand, because children of such unions do not have the legal protection pro-

vided by marriage, the same questions exist as in all cases of unmarried parents. The casework plan in these cases would be the same in the development of the social study and diagnosis of problems. However, services of the caseworker should be concentrated in the direction of helping the mother and father to realize how important marriage is, particularly for the protection of the children, and also for themselves while living in a society which considers marriage highly important.

18. *Virginia.* Public Assistance Manual, Vol. II, §203.14 (July 1962).

"When a man or woman continues to live in the home under circumstances that indicate that he or she maintains an extramarital relationship with a child's parent, the couple shall be deemed to have established a household accepting parental responsibilities, including financial support for all of the children."

APPENDIX D

States Which Define a Stepfather as a Parent for Purposes of ADC Eligibility But Impose No Duty of Support on Stepfathers by Virtue of the Marital Status Alone.[3]

1. *Arizona.* Family Services Manual, § 3-407.4A. *Magma Copper Co.* v. *Aldrete,* 70 Ariz. 48, 216 P.2d 392 (1950); *Franklin* v. *Franklin,* 75 Ariz. 151, 253 P.2d 337 (1957).

2. *Arkansas.* Dept. of Public Welfare Manual, § 2813. *Kempson* v. *Goss,* 69 Ark. 451, 64 S.W. 224 (1901); *Miller* v. *U.S.,* 123 F.2d 715 (8th Cir. 1942), *supp. by* 124 F.2d 849 (8th Cir. 1942), *supp. by* 126 F.2d 462 (8th Cir. 1942), *rev. on other grounds,* 317 U.S. 192, *rehearing denied,* 317 U.S. 713; *Dodd* v. *U.S.,* 76 F. Supp. 991 (W.D. Ark. 1948).

3. *District of Columbia.* Handbook of Public Assistance Policies and Procedures, Pt. 4.5(IV)(c). *Harrington* v. *Harrington,* 145 A.2d 121 (D.C. Mun. App. 1958).

4. *Georgia.* Manual of Public Assistance Administration, Part III, § 5, p. 6. *Wood* v. *Wood,* 166 Ga. 519, 193 S.E. 770 (1928).

5. *Idaho.* Letter to *amicus* Center from Howard H. Smith, Director of Social Services (dated Dec. 7, 1966).

6. *Indiana.* Public Assistance Manual, III-C-2. *Hollingsworth* v. *Swedenborg,* 49 Ind. 378 (1875).

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[3] This Appendix was compiled in the same manner as Appendix C and is subject to the same limitations.

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7. *Louisiana.* Manual of Policies and Procedures, § 2-740(A).

8. *Maine.* Public Assistance Policy Manual, Ch. II, § C, p. 2. *Inhabitants of Guilford* v. *Inhabitants of Monson,* 139 Me. 261, 185 A. 517 (1936); *Bunker* v. *Moins,* 139 Me. 231, 22 A.2d 734 (1942).

9. *Mississippi.* Manual of Policies and Procedures, § D, p. 4512.

9a. *New Hampshire.* Letter to *amicus* Center from George E. Murphy, Director, Division of Welfare, dated Nov. 30, 1967.

10. *North Carolina.* Public Assistance Manual of Policies and Procedures, § 440, *Dodson* v. *McAdams,* 96 NC 149, 2 S.E. 453 (1887).

11. *Oklahoma.* Manual of Policies and Procedures, § 336, as interpreted in Letter from L. E. Rader, reprinted in App. C *supra,* at p. 33a. Okla. Stat. Ann., Title 10, § 15; *Barker* v. *Barker,* 25 Okla. 48, 105 Pac. 347 (1909); *Daniel* v. *Tolon,* 53 Okla. 666, 157 Pac. 756 (1916).

12. *Oregon.* State Public Welfare Commission Staff Manual, § 2145.16. *State* v. *Langford,* 90 Or. 251, 176 Pac. 197 (1918); *Sargent* v. *Foland,* 104 Or. 296, 207 Pac. 349 (1922).

13. *Pennsylvania.* Dept. of Public Welfare Manual, § 3122.4. *Young* v. *Hipple,* 273 Pa. 439, 117 A. 185, 25 A.L.R. 1541 (1922); *Commonwealth ex rel. Stack* v. *Stack,* 141 Pa. Super. 147, 15 A.2d 76 (1940).

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14. *South Carolina.* Manual of Policies and Procedures, Vol. IV, p. 39.

15. *Texas.* Dept. of Public Welfare Manual of Services, § 2640. *Boyle* v. *Tolly,* 134 S.W.2d 500 (Civ. App. 1939); *Drescher* v. *Morgan,* 251 S.W.2d 173 (Civ. App. 1952).